

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	
	)	
	)	
Petition of the Minnesota Public Utilities Commission for	)	
Agreement with Changes in Definition of Service Areas for	)	
Exchanges Served by CenturyTel, Citizens	)	CC Docket No. 96-45
Telecommunications Company, Frontier Communications of	)	
Minnesota, Inc., Mid State Telephone Company, Scott-Rice	)	DA 03-2641
Telephone, United Tel Co. of Minnesota (UTC of Minnesota),	)	
Federated Telephone Company, Melrose Telephone Company,	)	
Winsted Telephone Company (TDS Telecom), Eckles	)	
Telephone Company (Blue Earth Valley Telephone Company),	)	
Lakedale Telephone Company, and Farmers Mutual Telephone	)	
Company	)	

**COMMENTS OF CENTURYTEL, INC.**

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice seeking comment in the above-referenced proceeding.<sup>1</sup>

**I. INTRODUCTION**

On March 19, 2003, the Minnesota Public Utilities Commission ("Minnesota PUC") conditionally approved the request of Midwest Wireless Communications, LLC ("Midwest") to be designated as a competitive eligible telecommunications carrier ("ETC").<sup>2</sup>

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<sup>1</sup> *The Wireline Competition Bureau Seeks Comment on the Minnesota Public Utilities Commission's Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, Public Notice in CC Docket 96-45, DA 03-2641 (rel. Aug. 12, 2003) ("Public Notice").

<sup>2</sup> *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket

On August 7, 2003, the Minnesota PUC filed a petition at the FCC seeking to redefine twelve Minnesota rural telephone companies' ("Rural ILECs") service areas (the "Petition"). On August 12, 2003, the FCC sought comment on the Petition.<sup>3</sup> Of particular note to CenturyTel is the Minnesota PUC's proposal to redefine CenturyTel's service area at the exchange level without first giving CenturyTel an opportunity to reconsider whether it should disaggregate support.

**II. THE FCC SHOULD NOT ALLOW CENTURYTEL'S SERVICE AREA TO BE CHANGED WITHOUT A WRITTEN COMMISSION DECISION. NOR SHOULD THE FCC REDEFINE CENTURYTEL'S SERVICE AREA WITHOUT GIVING CENTURYTEL THE OPPORTUNITY TO EVALUATE WHETHER IT SHOULD DISAGGREGATE SUPPORT.**

In 1997, the FCC adopted procedural rules that allow a rural carrier's service area definition to be changed without the issuance of a written FCC decision demonstrating that the FCC actually considered the Federal-State Joint Board's recommendations before adopting the new service area definition. Specifically, Section 54.207(c)(3)(ii) of the FCC's rules provides that, if the FCC declines to act on the petition within 90 days of the public notice, the petition will automatically be deemed approved by the FCC.<sup>4</sup> As CenturyTel has argued in prior comments, Section 214(e)(5) of the Communications Act of 1934, as amended (the "Act"), requires the FCC to take into consideration the Federal-State Joint Board's recommendations before changing the service area for a rural telephone company. A written decision is physical evidence of whether the FCC actually considered the Joint Board's recommendations. Furthermore, the FCC has an obligation to consider all the arguments made -- both in support of

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No. PT-6153/AM-02-686, Order Granting Conditional Approval and Requiring Further Filings (Mar. 19, 2003).

<sup>3</sup> Public Notice.

<sup>4</sup> 47 C.F.R. § 54.207(c)(3)(ii).

and against the Petition. As demonstrated herein, there is considerable debate regarding the merits of the Petition, which the FCC must demonstrate that it has fully considered. The FCC should not allow the Petition to take effect automatically as it has done in the past.<sup>5</sup>

The Commission should deny or postpone action on the Minnesota PUC's proposal to redefine CenturyTel's service area at the exchange level, until CenturyTel is given the opportunity to evaluate whether to disaggregate support at the exchange level also. On May 15, 2002, pursuant to Path One of the *RTF Order*,<sup>6</sup> CenturyTel exercised its right not to disaggregate support in the state of Minnesota.<sup>7</sup> Consequently, CenturyTel does not receive federal universal service support payments on an exchange area basis. Rather, support is averaged across the study area. At the time CenturyTel chose Path One, it was not aware of any competitive ETCs ("CETCs") proposing to redefine its Minnesota service area. If Midwest were allowed to receive high-cost support based on CenturyTel's average cost of serving all the exchanges in the study area, Midwest may receive artificially inflated support in some exchange areas, while declining to serve the higher-cost exchange areas.

CenturyTel urges the Commission to ensure that Midwest does not receive high-cost universal service support until CenturyTel has had an opportunity to re-evaluate whether, in light of the Minnesota PUC's Petition to redefine CenturyTel's study area at the exchange level,

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<sup>5</sup> See Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. filed in CC Docket 96-45 on Dec. 17, 2002.

<sup>6</sup> *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Report and Order, 16 FCC Rcd 11244 (2001) ("RTF Order").*

<sup>7</sup> *Id.* at 11303 ¶ 148.

support should be disaggregated in the same manner. The Commission stated in the *RTF Order* that “the level of disaggregation support should be considered in determining whether to certify new [ETCs] for a service area other than a rural carrier’s entire study area to ensure that competitive neutrality is maintained between incumbent carriers and competitive [ETCs].”<sup>8</sup> There is no indication in the Petition or the Minnesota PUC’s order designating Midwest as a competitive ETC that the state commission considered the disaggregation of support when it certified Midwest.

The Commission also noted in the *RTF Order*, that if, after a carrier has chosen a disaggregation plan, as is the case here, “a state receives a request to require a carrier to disaggregate and target support” the Commission expects that the state “will be guided in making a determination on the request by [the Commission’s] view that support should generally be disaggregated and targeted in a manner that the per-line level of support is more closely aligned with the cost of providing service.”<sup>9</sup> Because support continues to be based on CenturyTel’s cost of providing service to the entire study area, the Petition fails to ensure that support is aligned with costs. This failure could inure an unfair competitive advantage to Midwest.

To provide greater certainty and to discourage cream-skimming, CenturyTel urges the Commission either to grant CenturyTel the opportunity to evaluate whether it should disaggregate support at the exchange level, as described above, or, in the alternative, require Midwest to serve CenturyTel’s entire study area.

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<sup>8</sup> *Id.* at 11308 ¶164.

<sup>9</sup> *Id.* at 11303 ¶148.

### **III. MIDWEST SHOULD BE REQUIRED TO SERVE THE ENTIRE TERRITORY OF THE RURAL ILECS'.**

In the state ETC designation proceeding, the Minnesota PUC conditionally granted Midwest's request to be designated as an ETC for Midwest's entire licensed service territory in Minnesota. Midwest's wireless license, however, does not cover the entire service areas of the Rural ILECs. Pursuant to the Minnesota PUC's designation order, Midwest is not required to serve the study areas of the Rural ILECs in their entirety, either using its own facilities or a combination of its own facilities and resale of another carrier's services, as required by the Act and the FCC's rules.<sup>10</sup> The Minnesota PUC nevertheless concluded that designating Midwest as a competitive ETC would serve the public interest because Midwest's designation will increase competition.<sup>11</sup>

Promoting competitive entry alone is not enough of a justification to satisfy the public interest standard set forth in Section 214(e) of the Act. Significantly, the Petition will not bring rural consumers the competitive choice that the Minnesota PUC claims it will. The Petition does not assert that Midwest is a new service provider in CenturyTel's study area. Nor does the Petition require Midwest to provide service throughout CenturyTel's study area. The Minnesota PUC failed to analyze the impact of its Petition on competitive ETCs' incentives to serve only the more profitable exchange areas. The lack of facilities does not preclude competitive ETCs from serving the ILEC's entire study area. To ensure that Midwest is not incented to serve only the most profitable exchange areas, the Commission should require that Midwest serve the Rural ILECs' entire study areas.

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<sup>10</sup> 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.201(d)(1).

<sup>11</sup> Petition at 7-8.

**IV. REDEFINITION OF THE RURAL ILECS' SERVICE AREAS BEFORE THE FCC RESOLVES THE ISSUES RAISED IN THE CETC PROCEEDING IS PREMATURE.**

CenturyTel believes that redefining the rural ILECs' service areas in the manner proposed by the Minnesota PUC is premature. The Commission has before it a number of requests to modify rural service areas for competitive ETCs that do not desire to serve the entire study area of the rural LEC on whose federal universal support they desire to draw.<sup>12</sup> CenturyTel has faced redefinition of its service area in several states, and, despite strong opposition by CenturyTel and others, the requests for redefinition are invariably granted with only a cursory public interest analysis. Most recently, the Commission approved the redefinition of CenturyTel service areas in Alabama and Colorado, so that each CenturyTel wire center is a separate service area for competitive ETCs.<sup>13</sup> In Colorado, the service area redefinition went into effect without the Commission even issuing an order and, in both Colorado and Alabama, the Commission is reviewing its decisions to approve the service area redefinitions.<sup>14</sup> Commission precedent demonstrates that service area redefinitions have broad applications and

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<sup>12</sup> *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, FCC Public Notice in CC Docket 96-45 (rel. Jan. 10, 2003); *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, FCC Public Notice in CC Docket 96-45, DA 03-26 (rel. Jan. 7, 2003).

<sup>13</sup> Public Notice, *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, DA 03-26, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Jan. 7, 2003) ("*Colorado Review PN*") (stating that the petition had been deemed granted 90 days from that the Colorado petition to redefine CenturyTel's service area was placed on public notice); *RCC Alabama ETC Order* at ¶ 16; *Federal State Joint Board on Universal Service, Cellular South Alabama ETC Order* at ¶ 18.

<sup>14</sup> See Public Notice, *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, DA 03-45, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Jan. 10, 2003); *Colorado Review PN* at 1.

lower the bar for *all* subsequent competitive ETC designations in the rural carrier's service area with little tangible benefit for rural customers who live in those service areas.<sup>15</sup> This outcome, however, is contrary to Section 214(e) of the Act, which requires that each rural ETC designation must be reviewed and granted only if determined to be in the public interest.

The Minnesota PUC seeks to redefine the Rural ILECs' study areas because, according to the state commission, the designation of Midwest "cannot be implemented completely" without doing so.<sup>16</sup> Neither the Petition nor Midwest's designation as an ETC proposes to bring any "new competition" to the market, however. Rather, the Petition will result in a windfall in federal support to Midwest for doing exactly what the carrier is doing today without support. Because Midwest has not demonstrated any interest or initiative in seeking ways to serve the entire Rural ILECs' study areas, the Petition appears to be a filing of convenience for Midwest rather than a filing that will promote universal service to rural Minnesota customers. CenturyTel has filed extensive comments in this docket<sup>17</sup> and given testimony to the Joint Board on Universal Service,<sup>18</sup> arguing for clear federal standards for redefinitions such as the instant one. CenturyTel urges the Commission to postpone decision on this so it may benefit from the recommendations of the Joint Board in the pending rulemaking

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<sup>15</sup> *Cellular South Alabama ETC Order* at ¶ 2 (holding that the CETC applicant's request to redefine CenturyTel's service area to the wire center level was "moot," because the Commission has "recently agreed to a redefinition of the service areas of these rural telephone companies").

<sup>16</sup> Petition at 8.

<sup>17</sup> Comments of CenturyTel, Inc., CC Docket 96-45, filed May 5, 2003; Reply Comments of CenturyTel, Inc., CC Docket 96-45, filed June 3, 2003.

<sup>18</sup> Prepared Testimony of Jeff Glover, Vice President of CenturyTel, Inc., on Behalf of Independent Telephone & Telecommunications Alliance, Before the Federal-State Joint Board on Universal Service, CC Docket 96-45, filed July 22, 2003.

proceeding.<sup>19</sup> Deferring a decision for the brief period until the Commission receives the Joint Board's recommendations will help ensure that the Commission does not redefine any rural ILEC's study area in a manner inconsistent with the Commission's rules.


## V. CONCLUSION

CenturyTel opposes the Petition to redefine CenturyTel's study area at the exchange level. As an initial matter, CenturyTel notes that the FCC should not allow CenturyTel's service area to be changed without a written FCC decision. With respect to the merits of the Petition, the Commission either should allow CenturyTel the opportunity to re-evaluate whether to disaggregate support at the exchange level, or require Midwest to serve CenturyTel's entire study area. Anything short of this would allow Midwest an unfair competitive advantage. Finally, CenturyTel urges the Commission to delay the redefinition of the Rural ILECs' study areas until the Commission resolves the issues raised in the CETC proceeding.

John F. Jones  
Vice President, Federal Government Relations  
CENTURYTEL, INC.  
100 Century Park Drive  
Monroe, Louisiana 71203  
(318) 388-9000

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Respectfully submitted,  
CENTURYTEL, INC.

  
Karen Brinkmann  
Tonya Rutherford  
LATHAM & WATKINS  
Suite 1000  
555 Eleventh Street, N.W.  
Washington, D.C. 20004-1304  
(202) 637-2200

Counsel for CENTURYTEL, INC.

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<sup>19</sup> Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("CETC Proceeding").